



DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA-2021-0010]

Notice of Funds Availability (NOFA) for the Organic and Transitional Education and Certification Program (OTECP)

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Notification of funds availability.

SUMMARY: The Farm Service Agency (FSA) is announcing the availability of \$20 million through the new Organic and Transitional Education and Certification Program (OTECP) for certified operations and transitional operations that incurred eligible expenses in fiscal years (FY) 2020, 2021, and 2022. Producers and handlers incur significant costs to obtain or renew USDA organic certification each year, and the economic challenges due to the COVID-19 pandemic have made obtaining and renewing USDA organic certification financially challenging for many operations. In this document, FSA is providing the eligibility requirements, application process, and payment calculation for OTECP.

DATES: *Funding availability:* Implementation will begin November 8, 2021.

Comment date: We will consider comments on the Paperwork Reduction Act that we receive by: **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*].**

ADDRESSES: We invite you to submit comments on the information collection request. You may submit comments by the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to: www.regulations.gov and search for Docket ID FSA–2021–0010. Follow the online instructions for submitting comments.
- Mail, Hand-Delivery, or Courier: Director, Safety Net Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250– 0522. In your comment, specify the docket ID FSA–2021–0010.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All comments received will be posted and publicly available on <https://www.regulations.gov>. Copies of the information collection may be requested by contacting the above address.

FOR FURTHER INFORMATION CONTACT: Kimberly Graham, telephone: (202) 720-7641; or by email: kimberly.graham@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

Producers and handlers of agricultural products that are organic operations are those that have obtained USDA organic certification under the USDA Agricultural Marketing Service (AMS) National Organic Program (NOP) established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6524) and the USDA organic regulations in 7 CFR part 205. Organic operations are also required to receive continuation of certification to the USDA organic regulations. Farming operations (crop and livestock producers) that are transitioning to organic production methods prior to

obtaining USDA organic certification are referred to in this document as transitional operations.

As part of the assistance that USDA is providing through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; Division B, Title I, Pub. L. 116–136), FSA is announcing the availability of \$20 million through the new OTECP for certified operations and transitional operations that incurred eligible expenses in FY 2020, 2021, and 2022. Producers and handlers incur significant costs to obtain or renew USDA organic certification each year, and the economic challenges due to the COVID-19 pandemic have made obtaining and renewing USDA organic certification financially challenging for many operations. In this document, FSA is providing the eligibility requirements, application process, and payment calculation for OTECP.

OTECF will provide assistance to certified operations, as well as operations that are transitioning to organic production methods in anticipation of obtaining USDA organic certification. During the COVID-19 pandemic, these operations faced challenges due to loss of markets, increased costs, and labor shortages, in addition to costs related to obtaining or renewing their USDA organic certification, which producers and handlers of conventionally produced commodities do not incur. Transitional operations also faced the financial challenge of implementing practices required to obtain USDA organic certification without being able to obtain the premium prices associated with certified organic commodities. Further, for organic operations requesting an addition or update to their existing certification, the new land or facility must quickly move through the certification process, which typically includes an on-site inspection. Certified organic products must also meet very specific packaging and labeling requirements. Overall, this leads to reduced flexibility and unique supply chain challenges for organic businesses and farms when on-site inspections are not possible, as has often been the case during the COVID-19 pandemic.

Certified operations and transitional operations may apply for OTECP for eligible expenses paid during FY 2020, 2021, and 2022. OTECP covers 25 percent of a certified operation's eligible certification costs, up to \$250 per certification category (crop, livestock, wild crop, handling, and State Organic Program fee).¹ It also covers 75 percent of a transitional operation's eligible costs, up to \$750, for each year. For both certified operations and transitional operations, OTECP covers 75 percent, up to \$200, per year for registration fees for educational events that include content related to organic production and handling in order to assist operations in increasing their knowledge of production and marketing practices that can improve their operations, increase resilience, and expand available marketing opportunities. For both certified operations and transitional operations, OTECP also covers 75 percent, up to \$100, of the cost of soil testing required under the NOP to document micronutrient deficiency.

Definitions

For this NOFA, the following definitions apply:

Certified operation means a crop or livestock production, wild crop harvesting, or handling operation, or portion of such operation, that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501-6524) and the regulations in 7 CFR part 205.

¹The USDA organic regulations recognize four separate categories that must be individually inspected for USDA organic certification: crop, livestock, wild crop, and handling (that is, processing). For the purpose of OTECP, State organic program fees are recognized as an additional category; these fees may be required by States that have established a State organic program according to 7 CFR 205.620 through 205.622, and are in addition to the costs of USDA organic certification under the four categories of USDA organic certification. A single operation may be certified under multiple categories. For example, a certified organic vegetable farm that also has certified organic chickens and produces certified organic jams would be required to be certified for three categories: crop, livestock, and handling.

Educational event means an event, such as a conference, training program, or workshop, that provides educational content addressing topics related to organic production and handling, such as farming and production methods, NOP requirements, and marketing. It includes both in-person and remote events.

Soil testing means soil tests to document micronutrient deficiency as required by 7 CFR 205.601(j)(7).

Transitional operation means a crop or livestock production operation that is transitioning to organic production in anticipation of obtaining USDA organic certification, and that has an organic system plan or written documentation from a certifying agent accredited by the National Organic Program.

USDA organic certification means a determination made by a certifying agent that a production or handling operation is in compliance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6524) and the regulations in 7 CFR part 205, which is documented by a certificate of organic operation.

The following definitions in 7 CFR 205.2 also apply to this NOFA: “certification or certified,” “certifying agent,” “crop,” “handler,” “inspection,” “inspector,” “labeling,” “livestock,” “National Organic Program (NOP),” “organic,” “organic production,” “organic system plan,” “processing,” “producer,” “State organic program,” and “wild crop.”

Eligible Applicants

To be eligible for OTECP, an applicant must have paid eligible costs during FY 2020, 2021, or 2022 and, at the time of application, be either a certified operation or a transitional operation.

Operations with suspended, revoked, denied, or withdrawn USDA organic certifications at the time of application are ineligible for OTECP. OTECP is open to certified operations and transitional operations located in the 50 United States, the

District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Eligible and Ineligible Expenses

OTECF provides assistance for eligible expenses paid by the applicant during:

- FY 2020 (October 1, 2019, through September 30, 2020),
- FY 2021 (October 1, 2020, through September 30, 2021), and
- FY 2022 (October 2, 2021 through September 30, 2022).

Expenses that have been incurred by the applicant, but have not been paid, are not eligible for assistance through OTECF.

Certified operations may receive assistance for the following costs for obtaining or renewing their USDA organic certification for the crop, livestock, wild crop, handling, and State organic program categories:

- Application fees;
- Inspection fees, including travel costs and per diem for organic inspectors;
- USDA organic certification costs, including certification fees necessary to access international markets with which AMS has equivalency agreements or arrangements;
- State organic program fees;
- User fees or certifier sales assessments; and
- Postage.

For transitional crop and livestock operations, eligible expenses include fees charged by a certifying agent or consultant for pre-certification inspections and development of an organic system plan. Operations that incur eligible costs prior to USDA organic certification but became certified prior to the end of the fiscal year may not receive cost share for the same expense as both a certified and a transitional operation.

For both certified operations and transitional operations, soil testing and educational event registration fees are also eligible expenses.

The following expenses are not eligible for cost share under OTECP:

- Inspections due to violations of USDA organic regulations, or State organic program requirements;
- Costs related to non-USDA organic certifications;
- Costs related to any other labeling program;
- Materials, supplies, & equipment;
- Late fees;
- Membership fees;
- Consultant fees, except as described above for transitional operations;
- Costs related to educational event attendance other than registration fees; and
- Costs for tests other than soil testing as defined in this NOFA.

Application Process

The application period for 2020 and 2021 begins on November 8, 2021, and ends on January 7, 2022. The application period for 2022 will be announced next year.

Applicants may apply for OTECP at any USDA Service Center.² Each applicant must submit a complete application in person or by mail, e-mail, facsimile, or other methods announced by FSA. A complete application includes the following documentation:

- Form FSA-883, Organic and Transitional Education and Certification Program (OTECP), which includes a certification of the applicant's status as a certified operation or transitional operation and their eligible expenses;

² USDA Service Center locations and contact information are available at <https://offices.sc.egov.usda.gov/locator/app>.

- AD-2047, Customer Data Worksheet, if not already on file with FSA; and
- SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form, if not already on file with FSA.

Applicants may be required to provide additional documentation to FSA, if necessary, to verify eligibility or issue payment. Eligible expenses are based on applicant certification and are subject to spot check. In the event that an application must be verified, certified operations that previously applied for the Organic Certification Cost Share Program (OCCSP) through an FSA local office and provided documentation of eligible expenses are not required to resubmit that documentation to FSA; however, those applicants must submit documentation of any additional eligible expenses included on their OTECP application that were not previously included in their OCCSP application. Certified operations that previously applied for OCCSP through a participating State Agency must submit the required documentation of their eligible expenses if requested by FSA.

Payments

OTECP payments are calculated separately for each category of eligible costs based on the percentages and maximum payment amounts in the following table.

Eligible Applicants	Category of Eligible Expenses	Payment Amount of Eligible Costs per Category
Certified operations	Organic certification – crops	25 percent, up to \$250
	Organic certification – livestock..	25 percent, up to \$250
	Organic certification – wild crop.	25 percent, up to \$250
	Organic certification – handling .	25 percent, up to \$250
	State Organic Program fees	25 percent, up to \$250
Transitional operations	Eligible transitional expenses	75 percent, up to \$750
Certified operations and transitional operations.....	Educational event registration fees	75 percent, up to \$200
	Soil testing	75 percent, up to \$100

Payments will be equal to the applicant's eligible expenses multiplied by the percentage for the applicable category in the table above, not to exceed the maximum

payment amount for the category. An applicant must report any previous cost share assistance, excluding OCCSP payments, received for the expenses included on their application. For each crop, livestock, wild crop, handling, and State organic program fees category, the OTECP payment plus the additional cost share assistance, excluding OCCSP, cannot exceed the portion of the costs not covered by OCCSP.³ For transitional expenses, soil testing, and educational event registration fees, the amount of the applicant's OTECP payment plus the reported additional cost share assistance cannot exceed 100 percent of the total amount of eligible expenses, as determined by FSA.

FSA will issue payments after the end of the application period for each fiscal year. If calculated payments exceed the amount of available funding, payments will be prorated.

Other Provisions

Participants are required to retain documentation in support of their application for 3 years after the date of approval. Participants receiving OTECP payments or any other person who furnishes such information to USDA must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

³ OCCSP provides up to 75 percent of the costs incurred by a certified operation in obtaining USDA organic certification, up to a maximum of \$750 (7 U.S.C 6523), per category for crop, livestock, wild crop, handling, and State organic program fees. On August 10, 2020, FSA announced that the maximum OCCSP payment for FY 2020 through FY 2023 would be 50 percent of the certified organic operation's eligible costs, up to a maximum of \$500 per certification category, due to the limited amount of funding available (85 FR 48149-48150). OTECP provides assistance for the portion of eligible USDA organic certification costs that is not covered by OCCSP. Prior participation in OCCSP is not required for certified operations to be eligible for OTECP. Certified operations that did not apply for OCCSP prior to the applicable program deadline may contact their local FSA office for information on how to submit a late-filed OCCSP application.

If an applicant files an application with an FSA county office after the application deadline, the application will be considered a request to waive the deadline. The FSA Deputy Administrator for Farm Programs (Deputy Administrator) has the discretion and authority to consider the application and waive or modify application deadlines and other requirements or OTECP provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or OTECP provisions do not adversely affect the operation of OTECP. Although applicants have a right to a decision on whether they filed applications by the deadline or not, applicants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion to consider the request will not be considered an adverse decision and is, by itself, not appealable.

Equitable relief and finality provisions specified in 7 CFR part 718, subpart D, apply to determinations under OTECP. Persons and legal entities who file an application with FSA have the right to an administrative review of any FSA adverse decision with respect to the application under the appeals procedures at 7 CFR parts 780 and 11. The determination of matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed. Such matters of general applicability include, but are not limited to, the determination of eligible categories of expenses and payment rates.

Any payment under OTECP will be made without regard to questions of title under State law and without regard to any claim or lien. The regulations governing offsets in 7 CFR part 3 do not apply to payments made under this part.

In either applying for or participating in OTECP, or both, the applicant is subject to laws against perjury and any penalties and prosecution resulting therefrom, with such laws including but not limited to 18 U.S.C. 1621.

For the purposes of the effect of a lien on eligibility for Federal grants, loans, or programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under OTECP, but only as to beneficiaries who, as a condition of the waiver, agree to apply the OTECP payments to reduce the amount of the judgment lien.

In addition to any other Federal laws that apply to OTECP, the following laws apply: 18 U.S.C. 286, 287, 371, and 1001.

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection request associated with OTECP. The OTECP information collection request is for the producer and handler to provide FSA the information of their status of either a certified operation or transitional operation and their eligible expenses to qualify for the payments. FSA submitted the emergency approval request that covers OTECP information collection activities to OMB for a 6-month approval. After the 60-day comment period ends, the information collection request will be submitted to OMB for a 3-year OMB approval.

Title: Organic and Transitional Education and Certification Program (OTECP).

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: The information collection request is required for the producers and handlers to provide their status as either a certified operation or transitional operation and their eligible expenses to get the OTECP payments. The forms for the producers and handlers to complete for the OTECP payments and the payment calculations are described in this document.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by

the estimated total annual responses. Public reporting burden for this information collection is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producer and handler.

Estimated Annual Number or Respondents: 13,250.

Estimated Number of Responses per Respondent: 1.69.

Estimated Total Annual Responses: 22,450.

Estimated Average Time Per Response: 1 hour.

Estimated Total Annual Burden on Respondents: 22,450.

FSA is requesting comments on all aspects of this information collection to help us to:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be

summarized and included in the submission for Office of Management and Budget approval.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of OTECP is to provide assistance to certified operations and transitional operations for the costs of obtaining and renewing USDA organic certification, and for eligible precertification and education costs, as well as soil testing. The Categorical Exclusions in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii) (that is, financial assistance to supplement income...). No Extraordinary Circumstances (7 CFR 799.33) exist. FSA has determined that this final rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Catalog of Federal Domestic Assistance

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.139, Organic and Transitional Education and Certification Program (OTECP).

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from

a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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Zach Ducheneaux,
Administrator,
Farm Service Agency.

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